

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24269  
Docket Number SG-24246

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen  
{ National Railroad Passenger Corporation

STATEMENT OF CLAIM: "Claim of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation:

On behalf of Assistant Signal Maintainer D. Tarasevich, account Carrier assigned a junior employee to the Mystic, Connecticut, signal maintainer position: (1) for the difference in pay between Assistant Signal Maintainer and Signal Maintainer, (2) all overtime pay earned by any Signalman or Signal Maintainer on the Mystic territory and (3) pay at the going rate for the use of his private vehicle traveling between the Mystic Signal Maintainer's headquarters and his home (daily distance 14 miles) -- all this to be paid from the effective date of this award, December 10, 1979, to the date this violation of the Signalmen's Agreement is corrected."

OPINION OF BOARD: This claim arises from the failure of Carrier to award the position of Signal Maintainer at its Mystic, Connecticut facility to Claimant, D. Tarasevich, in December 1979. Claimant was an Assistant Signal Maintainer. He bid for the position when it was posted via Bulletin 154-79 on November 27, 1979. However, Carrier awarded the position to Signalman D. Brown, who was junior to the Claimant on the Signalmen's roster.

As a result of Carrier's actions, Claimant filed this claim allegedly on January 2, 1980. Carrier denied the claim on April 23, 1980. That denial was appealed by the Organization. The claim is now before this Board for adjudication.

The Organization maintains that Carrier's denial of the claim on April 23, 1980 violated Article V of the August 21, 1954 Agreement. That article reads, in relevant part:

"1.....

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

The Organization asserts that the claim was obviously denied more than sixty days after it was filed, since it was filed on January 2, 1980 and denied on April 23, 1980. Thus, according to the Organization, the claim must be allowed as presented and Claimant is to be compensated for 1) the difference in pay between Assistant Signal Maintainer and Signal Maintainer, 2) any overtime pay earned by any Signelman or Signal Maintainer on the Mystic territory and 3) the going mileage rate for the use of his private vehicle between the Mystic Signal Maintainer's headquarters and his home retroactive to December 10, 1979.

Carrier, on the other hand, disputes Claimant's contention that he actually filed a claim on January 2, 1980. While it acknowledges receipt of a registered envelope, it argues that the envelope did not contain the claim. In addition, it argues that the claim, even if sent in the registered envelope, was not properly submitted to its officer designated to receive same. As such, Carrier concludes that the claim should be denied on procedural grounds.

This claim must be sustained in part. The record evidence reveals that Claimant properly filed this claim on January 2, 1980. The receipt, by Carrier, of a registered envelope raises the presumption that it contained a proper document. That presumption has not been rebutted here. Thus, we conclude that the claim was filed on January 2, 1980.

The record also clearly reveals that the claim was denied by Carrier on April 23, 1980, more than sixty days after it was filed, in violation of Article V of the Agreement. Therefore, as Article V requires, the claim must be allowed as presented from the date it was filed - January 2, 1980.

However, Carrier's liability is not infinite. As the National Disputes Committee ruled in Decision No.16, "(the) receipt of the carrier's denial letter ... stopped the carrier's liability arising out of its failure to comply with Article V of the August 21, 1954 Agreement". Here Carrier's denial of the claim was dated April 23, 1980. Thus, Carrier's liability should cease on April 23, 1980, the presumed date of the Organization's receipt of Carrier's denial.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

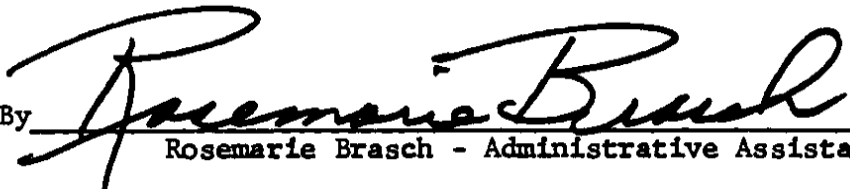
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.